

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1079 OF 2005
(For Leave to Appeal)

The State of Maharashtra	Appellant
vs.	
Dipya @ Deepak C. Kamble	Respondent

Ms.V.R.Bhonsale, Additional Public Prosecutor for the
State.

**CORAM : R. M. LODHA &
R. S. MOHITE, JJ.**

DATED : 21st February 2005

P.C.

Heard Ms.V.R.Bhonsale, the learned Additional
Public Prosecutor and perused the record and
proceedings.

2. On 21.07.2003 at about 2.30 p.m. Anju (the
deceased) is said to have received burn injuries to the
extent of 75%. According to the prosecution case, the
accused who was her neighbour went to the house of Anju,
poured kerosene on her body and set her on fire by match
stick. Anju died after about 48 hours.

3. The prosecution mainly relied upon the deposition of
Gopal (PW-1), Laxmibai (PW-2)-mother of the deceased,
ASI Bapurao Bhat (PW-3) and Dr.Parag Kothadiya (PW-4) to
prove the three dying declarations said to have been

made by Anju.

4. The accused denied her involvement with the crime and in support of the case that Anju did not die homicidal death, but the death was accidental, he examined Harwalkar (DW-1).

5. Having considered the three dying declarations, we find that the said dying declarations do not sufficiently implicate the accused with the crime.

6. The material circumstances may immediately be noticed by us. Anju was admitted in Surya hospital on 21.07.2003 at about 7.45 p.m. The medical papers are marked Exhibit 34 on record. The said documents were admitted by the defence. At the time of Anju's admission in Surya hospital, case history for clinical notes was taken down at the instance of Anju's mother. The said notes noted down at the instance of Anju's mother i.e. PW-2 show that Anju was preparing tea on stove; the stove got blasted; Anju got burn injuries; the mother (PW-2) poured water; Anju was initially taken to Sasson hospital and then shifted to Surya hospital at about 7.45 p.m. The clinical notes prepared in Surya hospital also bear the thumb impression of PW-2. The said notes reveal that suicidal case. Since it was found to be suicidal case, Mr.Harwalkar (DW-1)

from Sahakarnagar Police Station was called. The said notes also reveal that DW1 Harwalkar arrived at Surya hospital and recorded the dying declaration given by Anju on 21.07.2003 at 8.45 p.m. DW-1-Harwalkar in his deposition has affirmed that on 21.07.2003 in the evening having received information of about burn injury case at about 8 p.m., he first went to Sasoon hospital and thereafter to Surya hospital and recorded the dying declaration of Anju wherein she stated that she was preparing tea at about 3 p.m.; the stove burst and she received burn injuries. DW-1 enquired from her whether she had any grievance against anybody but she told that there was no grievance. At the time of the dying declaration recorded by DW-1 Anju's mother PW-2 was present. The evidence of DW-1, gets corroborated by history and clinical notes (Ex.34) prepared at Surya hospital. In this view of the matter, the dying declaration that Anju is said to have be made to PW-2 on 21.07.2003 at about 2p.m. and the other dying declaration said to have been recorded by PW-3 on 22.07.2003 at 1p.m. become unreliable and unsafe for conviction. Moreover, there is material inconsistency in the dying declaration recorded by PW-3 on 22.07.2003 and the medical notes (Ex.34) prepared at Surya hospital.

7. There are material omissions in the deposition of

PW-2 as well. Her deposition also does not get support from deposition of PW-1.

8. All in all, it cannot be said that the prosecution was able to prove the offence under Section 302 against the accused-respondent. His acquittal, therefore, does not call for any interference.

9. No case for grant of leave is made out.

10. Criminal application for leave to appeal is rejected summarily.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)